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ABSTRACT

One issue in school restructuring has been deciding exactly how to make schools more autonomous and accountable. Charter schools, a recent concept, offer a viable means of integrating various reform ideas in order to create highly autonomous and accountable learning environments. This publication defines charter schools; highlights the appeal of such schools; offers nine elements of "stronger" legislation; and classifies existing laws into two broad categories--those granting more autonomy and those granting less autonomy--as a way to distinguish those laws that appear to hold the most promise of success. Six states have passed legislation granting more autonomy to charter schools--Arizona, Massachusetts, Michigan, Minnesota, California, and Colorado. Those granting less autonomy are Hawaii, Georgia, Kansas, New Mexico, and Wisconsin. Each state's legislation is briefly described. The passage of stronger charter school legislation (e.g., legal and fiscal autonomy, super waivers, and school-level negotiation/bargaining provisions) is a difficult process. It is important to clarify key concepts and technology early in the process. Two tables that compare the 10 states' charter school laws are included. (LMI)

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Comparing Charter School Laws: The Issue of Autonomy

Policy Brief *September 1994*

by

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Introduction

Despite the efforts of many dedicated professionals from within and outside the educational arena, the quest for educational reform is far from over. Many argue that the traditional public school structure is outdated and that restructuring must occur. Central to the debate is the notion that those closest to the students (i.e., school, not district, personnel), must have more authority and accountability for their actions. With greater independence from a central authority, it is argued, school personnel will develop innovative learning environments more closely matched to students' needs. Many also believe that both positive and negative "pressures" are necessary to significantly reform the larger educational system. The difficulty, however, has been in deciding exactly how to make schools more autonomous and accountable, and how to create such pressures.

A recent concept -- charter schools -- may provide part of the answer. Charter schools offer a viable means of integrating various reform ideas in order to create highly autonomous and accountable learning environments. They also force educators to question the wisdom of many conventional management and instructional practices. *The overall goal of charter schools is not to simply develop a few new schools, but to create dynamics that will cause changes within the entire system.*

While charter schools hold great promise, they are not an instant panacea. They also represent a serious threat to the status quo, and for this and other reasons, enactment of charter school legislation has been, and will continue to be, a formidable challenge. This briefing defines what a charter school is; highlights the appeal of such schools; offers nine elements of "stronger" legislation; and classifies existing laws into two broad categories as a first step to distinguish those laws which appear to hold the most promise of success.

Charter Schools Defined

In its purest form, a charter school is an autonomous educational entity operating under a charter, or contract, that has been negotiated between the organizers who manage the school, and a sponsor who oversees the provisions of the charter. The *organizers* may be teachers, parents, or others from the public or private sector, while the *sponsors* may be local school boards, state education boards, or some other public authority.

Charter provisions address issues such as the school's instructional plan, specific educational outcomes and how they will be measured, and the management and financial plan for the school. Charter schools may be formed from an entire school's existing personnel and facilities, a portion of such a school (i.e., a school-within-a-school), or a completely new entity with its own facilities.

Once granted approval, a charter school becomes an independent legal entity with the ability to hire and fire, sue and be sued, award contracts for outside services, and control its own finances. Funding is based on student enrollment just as it would be for a school district. With a focus on educational outcomes, charter schools are freed from many (or all) district and state regulations often perceived as inhibiting innovation (e.g.,

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excessive teacher certification requirements, collective bargaining agreements, Carnegie Units, and other curriculum requirements).

When the term of a charter school's contract expires, it may be renewed -- providing the school has met its student outcomes, has not violated any laws or grossly mismanaged its affairs or budget, and continues to attract students, parents, and teachers. Failure in any of these areas puts the school out of business.

The Appeal of Charter Schools

There are several reasons why charter schools are gaining attention around the country. In an ideal setting they offer the following:

▸ ***Enhanced educational choice options.*** Charter schools can improve educational choice options for students, parents, and teachers in a number of ways. They offer teachers a chance to work in more innovative, autonomous schools that utilize new or alternative teaching methods, philosophical approaches, and assessment tools. They offer parents and students a choice of learning environments not often available within public schools.

▸ ***True decentralization.*** Charter schools can decentralize education in a way that traditional site-based management may not. As autonomous legal entities, charter schools are free to make all of their own administrative and instructional decisions, and they are held legally liable for them. This arrangement avoids the problems encountered by schools that are site-based managed, but for which the district remains legally liable. Fully autonomous charter schools also receive their funding directly from the state, just as if they were school districts. Teachers and staff become employees of the school (not the district), and assist in setting salary structures and employment policies for that school.

▸ ***Autonomy in exchange for accountability.*** Many educators argue that the restrictions and regulations imposed upon schools make it impossible for them to create truly innovative programs. Charter schools address this problem directly by means of a unique trade-off between autonomy and accountability. After a charter school proposal gains approval from a local school board or other authorized sponsor, the school is free to manage its own affairs (e.g., lease space, hire personnel, contract for services, enroll students). Though the school is subject to the same audits and inspections imposed by school districts and the state, it is not held to all of the same rules and regulations. In exchange for this freedom, the charter school is held to strict accountability on student outcomes. The overall educational focus is on outcomes, not inputs.

▸ ***The maintenance of common school ideals.*** Charter schools subscribe to the American democratic ideals of the common school: they are tuition-free, non-sectarian, non-selective in student admissions, and non-discriminatory on the basis of race, religion or disability. To date, only Arizona and Minnesota allow existing private schools to become charter schools, and these schools must follow the same rules as public schools that seek charter status and public funding (i.e., be non-sectarian, non-selective in admissions, and not charge tuition).

▸ ***New professional opportunities for teachers.*** Charter schools offer teachers a chance to become directly involved in all phases of school operations, from curriculum planning to management. They also open the door for teachers to become school "owners," rather than just employees. For example, teachers could establish a cooperative or partnership arrangement within a charter school, and contract with a sponsor (or subcontract with a non-profit charter school management team) to organize and run the school.

▸ ***A more market-driven educational system.*** Enrollment in charter schools is voluntary, so the schools must be designed to attract educational consumers. This introduces competition into the system. If a charter school fails to produce high student outcomes, the end result will be a revocation of the charter. Prior to such action, however, a school could lose the support of parents who desert the campus by "voting with their feet." Early evidence supports the notion that this kind of educational choice will put pressure on the entire education system to improve.

Elements of "Stronger" Charter School Laws

As the number of states with charter school-type legislation grows, it is clear that such laws are not all equal in design. Several clear distinctions exist in reference to who is allowed to organize and sponsor a school, the amount of legal and fiscal autonomy authorized, whether schools are automatically exempt from state laws, and the total number that are allowed. Various labels are now being used among charter school analysts to describe these differences -- "real" v. "pseudo," "strong" v. "weak," "live" v. "dead," and "more autonomous" v. "less autonomous" laws.

These types of labels are not intended to be pejorative, nor are they based simply on theory. Instead, the amount of charter school activity occurring in some states, and the resulting *ripple effects* (i.e., broader impacts on districts and the entire system) serve to identify key charter school law elements. These ripple effects include having some districts implement specific instructional programs as a means to keep teachers, parents, and community members from leaving and starting their own charter schools. For example, in one Minnesota district, a Montessori-type elementary program is now being offered by the district after parents sought to establish such a program as part of a charter school. Other districts are offering to charter their own schools, as is the case in Boston. Such activities could have occurred without charter school legislation, but the pressure to do so was not present.

To this end, nine elements deemed essential for a stronger (and perhaps more successful) charter school model have been extracted from the work of Ted Kolderie, a senior associate at the St. Paul-based Center for Policy Studies, and others active in the charter school movement. The belief is that charter schools will have the best chance to develop improved learning environments and positively impact the overall system if these elements are in place at a minimum:

1) At least one other public authority besides the local school board is able to sponsor a charter school (e.g., county board, state board, university).

2) A variety of public or private individuals/groups are allowed to organize, seek sponsorship, and operate a charter school.

3) Charter schools become discrete legal entities; they do not remain a part of a school district under the control of the district board and district-negotiated employee agreements.

4) Charter schools, as public entities, embrace common school ideals -- non-sectarian in programs and operations, tuition-free, non-selective in admissions, non-discriminatory in practices, and accountable to a public body.

5) Each charter school is held accountable for its performance, both by parents and by its sponsoring public authority; failure of a charter school to meet the provisions of its contract results in closure.

6) In return for stricter accountability, charter schools are automatically exempted from *all* state and local laws and regulations (i.e., super wavier) except those related to: health and safety; nondiscrimination and civil rights; fiscal and outcome accountability; and those agreed to within their charters.

7) A charter school is a school of choice for students, parents, and teachers; no one is forced to be there.

8) Each charter school automatically receives the full operating funds associated with its student enrollment (i.e., fiscal autonomy).

9) Within a charter school, teachers have the option to work as employees or they may become more of an owner and/or subcontractor. If previously employed in a district, they retain certain "leave" protections (e.g., seniority, retirement benefits) should they choose to return within a designated time frame.

Existing Charter School States

As of August 1994, 11 states had passed charter school-type legislation. Each law is different, with none containing every element noted above; the radical nature has resulted in many political compromises. Four areas have tended to raise the most concern: (1) *organizer options* -- many want to exclude private individuals or schools; (2) *sponsorship options* -- many want only the local school board to sponsor; (3) *legal and fiscal autonomy* -- many want charter schools to remain part of the district; and (4) *employee requirements/protections* -- many want to require certification, and maintain district-level collective bargaining provisions.

There are however, six states in which more financial and/or legal autonomy is granted, more freedom from state and local laws is provided, and, perhaps as a result, more charter school activity is occurring. Since these are often the most difficult charter law elements to obtain, these laws can be labeled to be "stronger" in nature. In addition, a fair share of activity and ripple effects are already visible in these states. To this end, the following state descriptions are grouped according to their degree of "autonomy" (i.e., authority and freedom) allowed by law.

States Granting More Autonomy

Arizona: This state's charter school law passed in a June 1994 special session as part of a broader school improvement act. Organizers may be a public body, private organization, or any individual. The three potential sponsors include: 1) any school district governing board; 2) the State Board of Education; or 3) the newly created State Board for Charter Schools. There is no limit on the number of charters which may be approved by local districts, while each of the state boards may charter up to 25 schools per year. Charter schools are allowed to be financially and legally autonomous, with the initial charter being good for five years and then renewable at intervals of seven years thereafter.

Arizona's legislation has a few unique features (besides the creation of a separate state board). Provisions exist to protect district employees developing charter school proposals from unlawful reprisals. A $1 million stimulus fund to support start-up costs was established with charter schools eligible to receive grants up to $100,000 for each of two years.

Massachusetts: As part of a broader reform package, Massachusetts passed legislation in 1993 in which 25 public charter schools are permitted. Each may be organized by two or more certified teachers, 10 or more parents, or by any other individual or group that successfully enters into a charter agreement with the state secretary of education (note: existing private schools are not allowed to apply). Legal and financial autonomy is automatically granted to charter schools.

Although the charter schools are not authorized to begin until school year 1995/96, the initial application process yielded 64 proposals, of which 15 obtained preliminary approval. Three of these proposals will be subcontracted with the Edison Project, a for-profit enterprise. Other approved proposals include a Boston University plan for a residential high school for homeless children and wards of the state, and a proposal for Benjamin Franklin Classical, a school that will offer a rigorous classical education for students in grades K-8.

Michigan: Passed in December 1993 as part of broader education reform legislation, this state's charter schools are referred to as "public school academies." Michigan does not limit the number of schools that can be approved, nor does it specify the length of time a charter will last. Organizers can be any individual or entity and may choose among four potential sponsoring bodies: local school districts, intermediate (regional) school districts, community colleges, and state public universities. Public school academies will be incorporated and recognized as government entities, and they will receive their full share of state funding through their sponsors (i.e., legally and fiscally autonomous). To date, seven charters have been approved, five by a university and two by local districts.

Minnesota: Building upon existing public school choice programs, Minnesota initiated the first charter schools legislation in 1991. The law initially authorized creation of up to eight legally

and financially autonomous schools (referred to as "outcome-based schools") to be organized by certified teachers and sponsored by local school districts. Minnesota's legislation was modified in 1993 and 1994 to allow up to 35 charter schools across the state. An appeals process to the state board of education was also added.

During the 1992/93 school year, two charter schools were operational -- City Academy which is located in a donated city recreation building in St. Paul and offers a year-round program for 40 at-risk adolescents and young adults ages 13-21; and Bluffview Montessori, a private K-6 school that converted to charter status. Five additional schools began operating in the 1993/94 school year. Among these are: Metro Deaf, a school for deaf and hearing impaired students, which emphasizes deaf language, culture, and history; Skills for Tomorrow, a vocational/technical school developed with the support of the Teamsters Union and the Minnesota Business Partnership, which emphasizes applied learning through internships; and New Heights Schools, Inc., a pre-K through grade 12 school, which emphasizes the needs of at-risk students. Six additional schools are slated to open Fall 1994, for a total of 13 operating out of 14 approved.

California: In September 1992, California adopted the nation's second charter schools law, in part, as a defense against the passage of a private school voucher ballot measure. California's law allows up to 100 charter schools in the state, and permits any individual to initiate a charter school petition. Potential sponsors include the local school district or, if an appeal is sought, the applicable county board of education. Entire districts may also apply for charter status. By law, California charter schools are financially autonomous, though funds continue to flow through the district to the school, and charter schools often contract with their districts to provide some services. The extent of each school's legal autonomy is determined within its specific charter agreement. At this writing, 62 have been "assigned numbers" (with 4 additional expected in September). During '93/94, 26 were operational, with 64 anticipated to be operating during '94/95.

Several examples of California charter school proposals include: Bennett Valley Charter School which employs a home-based independent learning approach; Options for Youth Charter School which focuses on dropouts and those at risk of dropping out; and Bowling Green Elementary School which practices Edward Deming's Total Quality Management. Unlike their counterparts in Minnesota and Massachusetts, many California charter schools are being converted from existing schools rather than being created entirely new.

Colorado: Legislation passed in June 1993 permits up to 50 charter schools to be created prior to July 1997. Afterward, the ceiling is removed. Under the law, any individual or group can enter into a charter school agreement with a local school board if "adequate" support from parents, teachers, and pupils is obtained. An appeals process involves the state board of education, which can ultimately require a local board to accept a sound charter proposal. A charter school remains under the legal authority of its school board, but receives at least 80 percent of normal per pupil funding from the district. Two schools were opened during '93/94, with 12 others slated to start in '94/95 and three more in '95/96.

States Granting Less Autonomy

Hawaii: Legislation was passed in 1994, allowing up to 25 "student-centered" charter-type schools to be created from existing public schools. A local school board must be established and must develop a detailed implementation plan (i.e., charter) that is approved by three-fifths of the school's administration, support and teaching personnel, and parents. The plan becomes effective 30 days after submission to the state board of education unless it does not comply with statewide educational performance standards (note: this board is similar to a district board since Hawaii has only one school district). Once accepted, the school is to receive state funds equal to the statewide per pupil expenditure for average daily attendance, in addition to other applicable state and federal programmatic funds. Up to 6.5% may be given back to the state department of education (DOE) if administrative services are provided. It is currently unclear if

the schools will become legally autonomous; however, teachers remain employees of the state and collective bargaining remains in place.

Georgia: Legislation passed in 1993 allows an unlimited number of charter schools to be converted from existing public schools. Public school personnel may apply to the state board for charter status if they obtain prior approval from their local school board, two-thirds of the school's faculty and staff, and a majority of parents at a meeting called to initiate a charter school petition. Charter agreements must emphasize school improvement and student outcomes. The schools are not legally autonomous from their districts, and the amount of funding they receive is to be specified in the terms of the charter agreements. No charter proposals have been submitted to date.

Kansas: Legislation passed in April of 1994, allows 15 charter schools to be created, with their charters renewable at three year intervals. A charter school petition may be submitted to a district governing board on behalf of an existing school, a school district employees group, an educational services contractor, or any other person or entity. After local board approval of the petition, the state board of education must review it to verify legal compliance; if not in compliance, they can amend and resubmit. Beyond this provision, however, there is no appeals process. If more than 15 schools receive charter approval from their district boards, the state board will choose those considered to have the most potential for success. These charter schools have neither legal nor financial autonomy from their districts. To date, no charter petitions have been requested from the state board.

New Mexico: Legislation passed in 1993 allows five existing public schools to be granted charter school status by the state board of education. These charter schools will continue to function under the legal authority of school districts, and certain administrative costs may be withheld by the districts. To help charter schools get started, the state board of education provided 10 schools with planning grants of $5,000 each. To date, four districts have proposed to "charter" an existing school beginning Fall 1994.

Wisconsin: Legislation passed in August 1993 required the state superintendent of education to approve the first 10 charter school requests received. These charter schools could be created by a local school board generating its own proposal; or by an individual submitting a petition signed by either 10% of the teachers in the school district or by 50% of the teachers at one school. A school board could convert all of its schools to charter status (up to a maximum of two per district) if the petition is signed by at least 50 percent of teachers employed in the district, and if arrangements are provided for children not wishing to attend charter schools. Charter schools remain under local school district control and their level of funding is determined by the charter agreement. Shortly after the legislation passed, ten district-generated charter school proposals were approved.

Will Passing "Stronger" Charter School Legislation Be Easy?

The passing of "stronger" charter school legislation (e.g., legal and fiscal autonomy; super waivers; school-level negotiation/bargaining provisions) is not to be attempted by those who are faint of heart. Experiences in other states have demonstrated that it is not an easy process. Opposition can be expected from teacher unions, school boards, and others who have a stake in the status-quo. Often these types of groups will support the concept of charter schools, but only "weaker" versions of such laws. Therefore it is important to clarify key concepts and terminology early in the process.

Can it be done? As increased numbers of students, teachers, parents, and community members implement charter schools, and as more school boards begin to modify their practices due to the competition of charter schools, the policy battles will become less difficult.

One overall policy question, however, still remains -- Will charter schools help students both within their walls, and across the educational system, to reach higher outcomes? It is too early too tell, but many educators, policymakers, and community members believe that charter schools represent a bold reform attempt that holds great promise.

COMPARISON OF "LESS AUTONOMOUS" CHARTER SCHOOL LAWS*

STATE YEAR PASSED	HAWAII 1994	GEORGIA 1993	KANSAS 1994	NEW MEXICO 1993	WISCONSIN 1993
Number Allowed in State	25	no limit	15	5	10
Automatically Free from Most State Education Code/ District Rules -- "Super Waiver"	yes, except: collective bargaining, procurement, discrimination, health and safety requirements	no, only those agreed to in charter	no, must apply to state and/or district for waivers	no, must apply to state for waivers	exempt from most state laws, but not district policies
Legally Autonomous	not sure; teachers remain employees of state (i.e., district)	no, under local board authority	no, under local board authority	no, under local board authority	no, under local board authority
Automatically Autonomous for 100% Operations" Funding	intent is "yes", in reality may only receive the average per pupil amount given to education department	no, funding amount is established in charter	no, funding amount is established in charter	no, appropriate administrative costs can be withheld	no, funding amount is established in charter
Length of Charter	4 years	3 years	3 years	5 years	up to 5 years
Private School Eligibility for Charter Status	no	no	no	no	no
Organizers	existing public schools	any Georgia public school faculty/staff	a school building, a school district employees group, an educational services contractor, or any other person or entity	existing school personnel and parents	any individual or the local school board
Sponsor	state board of education reviews/accepts plan	the local school board	the local school board	state board of education	the local school board
Final Approval	none needed	state board of education	state board of education ensures that charters approved by districts do not violate federal, state laws	none needed	state superintendent
Appeals Process	none	state board allows resubmission of petition	none	none	none
Support Needed from Teacher/Staff/ Parents for School Conversion	3/5ths of school's admin., teachers, support staff, and parents	≥⅔ of faculty and staff, ≥⅔ parents in meeting to initiate petition	charters must describe the level of interest and support from district employees, parents, and community	65% of faculty, and parent involvement and support	10% of teachers in district or 50% at a school in district

* A more comprehensive matrix and copies of all state laws are available from Morrison Institute
— = not addressed in legislation

Morrison Institute for Public Policy
Arizona State University
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COMPARISON OF "MORE AUTONOMOUS" CHARTER SCHOOL LAWS*

STATE YEAR PASSED	ARIZONA 1994	CALIFORNIA 1992	COLORADO 1993	MASSACHUSETTS 1993	MICHIGAN 1993	MINNESOTA 1991
Number Allowed in State	unlimited for local board sponsorship; up to 25 per year per state board	100	50 up to July, 1997, after which limit is removed	25; # of charter students not to exceed 0.75 of 1% of public school students	no limit if sponsor is district/university; 1 if sponsor is community college	originally 8, increased to 35 in 1994
Automatically Free from Most State Education Code/District Rules -- "Super Waiver"	yes, except: health, safety, civil rights, audit and student assessments, special education, insurance	yes, except: health safety, civil rights, state pupil assessments	no, only from state/district policies as agreed to in charter	yes, except: health, safety, civil rights, state pupil assessments	yes, except: health, safety, civil rights, school improvement, competitive bidding	yes, except: health, safety, civil rights, audits, special education
Legally Autonomous	yes, if state sponsored; depends on charter if local board sponsored	depends on charter	no, under local board authority	yes, organized as non-profit corporation	yes, organized as non-profit	yes, organized as non-profit, cooperative
Automatically Autonomous for 100% "Operations" Funding	generally yes -- if local board sponsored, receive at least district's average cost per pupil, if state sponsored, state funding formula determines amount	generally yes	no, but will get at least 80%	generally yes	generally yes	generally yes
Length of Charter	5 years	up to 5 years	up to 5 years	5 years	—	up to 3 years
Private School Eligibility for Charter Status	yes; must be nonsectarian	no	no	no	no; MI constitution forbids public $ going to private K-12 schools	yes, must be nonsectarian
Organizers	any public body, private person, or private organization	any individual can circulate a petition to start a school	any individual or group	≥ 2 certified teachers, or ≥ 10 parents, or any other individuals, groups	any individual or entity	licensed teachers
Sponsor	1) any local school board; 2) State Board of Education; or 3) State Board for Charter Schools	the local school board or county board on appeal	the local school board	state secretary of education	board of a local or intermediate school district, community college, or state public university	any local school board, or the State Board on appeal
Final Approval	none needed	none needed	none needed	none needed	none needed	state board of education
Appeals Process	none; can seek other sponsor	county board of education	state board of education	none	when local district denies proposal, organizers may place the issue on next school election ballot	state board of education
Support Needed from Teacher/Staff/ Parents for School Conversion	---	10% of teachers in school district or 50% of teachers at school	"adequate number" of parents, teachers, pupils	—	—	90% of teachers at the school

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